IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 218 of 1997

and

FIRST APPEAL No 219 of 1997

with

Civil Application No. 8475 of 1997

and

Civil Application No. 8474 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD

Versus

ABBAS KASAMBHAI GHANCHI

Appearance:

MR ARUN H MEHTA for appellants.

MR SHAKEEL A QURESHI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 24/03/98

ORAL COMMON JUDGEMENT (Per J.N. Bhatt, J.)

The road accident giving rise to this group of two appeals, under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short hereinafter), occurred on 14.7.1994, between 4 to 5 P.M. near village Rajpara, on Bhavnagar - Rajkot Highway. In the said accident, deceased Keshavbhai Devsibhai sustained serious injuries and succumbed to the same and, therefore, his heirs and legal representatives claimed an amount of Rs.7,00,000/by way of compensation, by filing MACP No. 317 of 1994, against the appellants/ original opponents, and the injured claimant, Abbas Kasam, claimed an amount of Rs.2,50,000/- by way of compensation, by filing MACP No. 357 of 1994, against the appellants, under the provisions of Section 166 of the Act.

The respondents, who are original claimants, inter alia, contended that injured Abbas Kasam was proceeding on his moped at the relevant time and deceased Keshavbhai was the pillion rider and both of them were proceeding towards Sihore, from Bhavnagar. When the said moped reached near village Rajpara, Khodiar, on Rajkot Bhavnagar Highway, at that time, a jeep No. GAQ 5480, driven by appellant No.2/ original opponent No.1, came from opposite direction, with excessive speed and on wrong side, and dashed against the moped, as a result of which both the riders were thrown off the moped on the road and deceased Keshavbhai, who was aged 29, sustained serious injuries and succumbed to the injuries and Abbasbhai Kasambhai sustained serious injuries, resulting into permanent partial disablement.

The opponents No.1 and 2 i.e., the driver and the owner of the jeep, did not appear and contest the claim. The original opponent No.3/ appellant No.1 herein, the insurer, filed written statement, at Ex.11, inter alia, controverting the allegations and averments made in the claim petitions.

The Tribunal, after raising issues and considering the evidence, partly, allowed the claim petitions by passing its common judgment and award, dated 12.9.1996, whereby, heirs of the deceased Keshavbhai, in MACP No.317 of 1994, came to be awarded an amount of Rs.4,04,000/- by way of compensation under both the heads which is, precisely, challenged in First Appeal No. 219 of 1997, whereas, in MACP No. 357 of 1994, the injured claimant came to be

awarded an amount of Rs.1,20,000/- by way of compensation for personal injuries, which is questioned before us in First Appeal No. 218 of 1997, by invoking the powers of section 173 of the Act.

Upon joint request and considering the facts and circumstances of the case, both the appeals are heard today. We have, extensively, gone through the evidence by calling the record and proceedings of the Tribunal.

In so far as the merits of First Appeal No. 218 of 1997 are concerned, the amount of award of Rs.1,20,000/- under both the heads awarded to the injured claimant, appears to be on a higher side in view of the fact that the permanent partial disablement of anatomy, as a whole, was not more than 7% and considering the age and avocation of the claimant, in our opinion, the amount of Rs.1,00,000/under both the heads - pecuniary loss and personal loss will be just and reasonable in the facts and circumstances of the case. Therefore, First Appeal No. 218 of 1997 is required to be, partly, allowed.

As regards merits of First Appeal No.219 of 1997 are concerned, following aspects need elaboration, which, in our opinion, the Tribunal has not, seriously, taken into consideration, as a result of which the amount of compensation is awarded on higher side:

(i) There was no reliable documentary evidence with regard to the income of the deceased except the income certificate issued by Sarpanch and produced, at Ex.28.

(ii) No supporting independent evidence was adduced.

(iii) The multiplier of 12 adopted by the Tribunal in the case of a young man of 29 is also not proper, being on lower side.

The Tribunal has considered the income of the deceased including the prospective income at Rs.4,000/- per month and assessed an amount of Rs.32,000/- out of Rs.48,000/per annum, as dependency value, which, in our opinion, is, lightly, on higher side, requiring our interference so as to slice it down to make it just and reasonable as envisaged by the provisions of Section 166 of the Act and the Law of Tort. It is needless to say that the loss of life or loss of limb cannot be evaluated in terms of money as being otherwise invaluable or immeasurable. However, the Tribunal is required to consider as to what economic loss the heirs of the

deceased are likely to suffer on account of the, untimely, demise of the bread-winner of the family in a road accident. So, the attempt of the Tribunal in such a case like the one in our hands, is to see that the victims of the road accident are placed as nearly as possible in the same monetary situation or status as they would have been had there been no road accident. Precise and mathematical calculation of an amount of compensation in such cases is hardly obtainable. However, the Tribunal has to make endeavour in the light of the evidence on record to see that the tort-feasors are saddled with the award of an amount of compensation which ought to be just and reasonable. The award should not be luxurious nor it should be pernicious. It should be just and reasonable in the circumstances of the case. These basic concepts of law of tort must be reflected in the decision making process while awarding the amount of compensation.

After having taken into account the material facts, age and avocation of the deceased, future chances of augmentation of income and other relevant incidental circumstances, the amount of compensation to the tune of RS.4,04,000/- is, slightly, on higher side.

In this case, the deceased was dealing with the building contract work and he was aged about 29. Some documentary evidence is produced to show that he was engaged in some building contract work in past. It is, equally, true that the deceased's avocation is not questioned before us. Therefore, taking into consideration the age, the then prevalent income of the deceased, the prospective chances, imponderables of life and other incidental circumstances, in our opinion, the net contribution to the common family funds, in any case in absence of any reliable documentary evidence, would not exceed Rs.2,000/- per month. Therefore, the claimants shall be entitled to an amount of Rs.2,000 X 12 = Rs.24,000/- The Tribunal has, unfortunately, taken 12 multipliers, which, in our opinion, is on a lower side. Even if the deceased was in the bracket of age group of 30-32, the multipliers should be atleast 14, if not 15. In the circumstances, the claimants would be entitled to Rs.24,000 X 14 = Rs.3,36,000/- and, obviously, the claimants are also entitled to the conventional amount of Rs.20,000/- for loss of expectation of life and Rs.4,000/- for treatment, transportation and after death ceremonies. Consequently, the claimants shall be entitled to only an amount of Rs.3,60,000/- by way of compensation under both the recognized heads, loss to the estate and loss to the dependents, against the total amount of award of

Rs.4,04,000/-. With the result, First Appeal No. 219 of 1997, arising out of M.A.C.P. No. 317 of 1994, is required to be, partly, allowed with the aforesaid modification.

In the result, First Appeal No.218 of 1997 is, partly, allowed and the amount of Rs.1,20,000/- awarded by the Tribunal, in MACP No. 357 of 1994, with interest at the rate of 15% per annum from the date of the application till the payment and cost, is reduced to Rs.1,00,000/only with proportionate cost and interest and to that extent the award stands modified and the appeal is allowed. No order as to costs.

In so far as First Appeal No. 219 of 1997, arising out of MACP No. 317 of 1994, is concerned, it is, partly, allowed and the award of the Tribunal of Rs.4,04,000/shall stand reduced to an amount of Rs.3,60,000/- with proportionate costs and same rate of interest, i.e., 15% from the date of the application till its payment. Accordingly, the award in MACP No. 317 of 1994 stands modified and First Appeal No.219 of 1997 is, partly, allowed with no order as to costs.

Before parting, our attention was drawn by Mr. Mehta to the fact that an amount of Rs.25,000/- in each matter has been deposited alongwith the appeals under Section 173 of the Act and, therefore, the said amount deposited in each appeal shall be transmitted to the Tribunal for passing appropriate orders. Rs.25,000/- each shall be deducted from the aforesaid awards and the Tribunal shall pass appropriate orders in terms of the impugned awards, pro-rata, alongwith remaining amount of compensation, which shall also be deposited as directed by us hereinabove, within a period of four weeks from today.

In civil applications, rule is made absolute in terms of the aforesaid order.